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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Albert James Gibson, Jr.,

10 Plaintiff,

11 v.

12 County of Maricopa, et al.,

13 Defendants.
14

No. CV-16-00767-PHX-JAT (JZB)

ORDER

15 Pending before the Court is Plaintiff's Motion to Amend. (Doc. 22.) For the
16 reasons below, the Court will grant Plaintiff's Motion and, after screening, allow Plaintiff
17 to proceed with his claims against Defendants.

18 **I. Background**

19 On October 28, 2015, Plaintiff, who is represented by counsel, filed a Complaint
20 in Maricopa County Superior Court. (Doc. 1-1 at 3.) Plaintiff filed a First Amended
21 Complaint in that court on February 22, 2016. (*Id.* at 14.) On March 22, 2016,
22 Defendants Maricopa County, Arpaio, Wade, Yelvington, Damato, Carlos Alanis, Canez,
23 Rogers, Karas, Miller, Townsend, Pendrick, Myers, and Hoyt, all represented by the
24 same counsel, paid the filing fee and filed a Notice of Removal. (Doc. 1.) On March 24,
25 2016, Defendants filed a Motion to Dismiss for Failure to State a Claim. (Doc. 3.) On
26 April 11, 2016, Plaintiff filed a Response to Motion to Dismiss or In the Alternative
27 Motion for Authority to Amend Complaint, and on April 15, 2016, Defendants filed a
28 Reply to Plaintiff's Response. (Docs. 6, 7.) In a May 3, 2016 Order, the Court dismissed

1 the First Amended Complaint for failure to state a claim and denied as moot Defendants'
2 Motion to Dismiss, Plaintiff's Motion for Extension of Time, and Plaintiff's Response.
3 (Doc. 8.) The Court gave Plaintiff 30 days to file a second amended complaint that cured
4 the deficiencies identified in the Order.

5 On June 2, 2016, Plaintiff filed a Second Amended Complaint, naming Arpaio,
6 Carlos, John or Jane Doe Detention Officer 1, and John or Jane Doe Supervisors 1-4 as
7 Defendants. (Doc. 9.) On June 16, 2016, Defendants Arpaio and Carlos filed an answer
8 to the Second Amended Complaint. (Doc. 10.) On August 2, 2016, the Court screened
9 Plaintiff's Second Amended Complaint and allowed Plaintiff's claims to proceed against
10 Defendant Carlos. (Doc. 13.) The Court further found that Plaintiff had stated claims
11 against John or Jane Doe Supervisors 1-4, but the Court did not order service of these
12 unidentified Defendants. (*Id.*) The Court dismissed Plaintiff's claims against Defendants
13 Arpaio and Detention Officer John/Jane Doe 1 without prejudice. (*Id.*)

14 On September 8, 2016, the Court entered a Case Management Order in this matter,
15 setting December 7, 2016 as the deadline for amending pleadings. (Doc. 20.) On
16 December 4, 2016, Plaintiff filed his Motion to Amend. (Doc. 22.) Rule 15 of the
17 Federal Rules of Civil Procedure provides that the Court should freely grant leave to
18 amend "when justice so requires." Fed. R. Civ. P. 15(a). Further, the Court finds that
19 Plaintiff has sufficiently complied with Rule 15.1 of the Local Rules of Civil Procedure.
20 Therefore, the Court will grant Plaintiff's Motion to Amend. Below, the Court screens
21 Plaintiff's Third Amended Complaint.

22 **II. Statutory Screening of Prisoner Complaints**

23 The Court is required to screen complaints brought by prisoners seeking relief
24 against a governmental entity or an officer or an employee of a governmental entity. 28
25 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
26 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
27 which relief may be granted, or that seek monetary relief from a defendant who is
28 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

1 A pleading must contain a “short and plain statement of the claim showing that the
 2 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 3 not demand detailed factual allegations, “it demands more than an unadorned, the
 4 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 5 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 6 conclusory statements, do not suffice.” *Id.*

7 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 8 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 9 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
 10 content that allows the court to draw the reasonable inference that the defendant is liable
 11 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
 12 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
 13 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
 14 specific factual allegations may be consistent with a constitutional claim, a court must
 15 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
 16 at 681.

17 **III. Plaintiff’s Third Amended Complaint**

18 In his two-count Third Amended Complaint, Plaintiff sues the following
 19 Defendants: Maricopa County Sheriff Joe Arpaio, Officer Carlos (Badge Number
 20 B2180), Detention Officers Landon Hoyt (Badge Number B2127) and Michael Wade
 21 (Badge Number B2679), Lt. Dan Karas (Badge Number A7994), and Shift Commander
 22 Sgt. James Rogers (Badge Number A7913). Plaintiff seeks monetary damages and fees
 23 and costs. In Count One, Plaintiff asserts negligence claims. In Count Two, Plaintiff
 24 asserts 42 U.S.C. § 1983 claims for the violation of his Fourteenth Amendment rights.

25 In support of his claims, Plaintiff alleges the following facts: Plaintiff had a
 26 disability requiring the use of a cane when he entered the Maricopa County Fourth
 27 Avenue Jail. Plaintiff was issued a cane by medical because without one, Plaintiff’s knee
 28 would “give out[,] causing him to fall.” Pursuant to a medical order, Plaintiff was given

1 a lower bunk in a lower tier cell, and this assignment was known by all Detention
2 Officers, including Defendant Carlos.

3 Most visits take place on the second level, but some inmates are housed in lower
4 tier cells so that they do not have to navigate the stairs for legal or other authorized visits.
5 When inmates housed in a lower tier cell get a visitor, they can meet with the visitor
6 without having to go upstairs if a detention officer authorizes the lower level visit. To
7 have a visit on the lower level, a guard must transport the inmate to and from the visit. A
8 visit on the second level does not require a guard's assistance. For visits on the second
9 level, a guard in the tower remotely opens the inmate's cell and the visitation area.

10 Each time Plaintiff had a legal or other visitor, the visit was held on the second
11 level, and he had to navigate the stairs without assistance. Each time, Plaintiff was
12 notified by the tower guard that he had a visitor, and Plaintiff would ask for assistance
13 getting up and down the stairs, but he was told that he would have to either get up and
14 down the stairs by himself or skip the visit. For four months, Plaintiff complained to
15 detention officers and supervisors about having second-level visits, as he was concerned
16 about falling while going up and down the stairs. Plaintiff claims that anyone watching
17 him navigate the stairs would know that "sooner or later he would fall going up or down
18 the stairs."

19 Plaintiff spoke with Defendants Rogers and Karas and requested assistance going
20 up and down the stairs to attend visits on the second level or, in the alternative, that all of
21 his visits take place on the lower level. Defendants Rogers and Karas told Plaintiff that if
22 he had a visit on the second level, he would have to get up and down the stairs himself or
23 miss the visit. Plaintiff claims that Defendants Rogers and Karas told Defendants Carlos,
24 Wade, and Hoyt that Plaintiff had to navigate the stairs without assistance or miss his
25 visits.

26 On October 29, 2014, Defendant Carlos, the tower guard, called Plaintiff over the
27 intercom system to inform Plaintiff that he had a legal visitor in the second level
28 visitation area. Plaintiff asked Defendant Carlos for assistance going up and down the

1 stairs because of his knee problems, and Defendant Carlos told Plaintiff that pursuant to
2 direction given by Defendants Rogers and Karas, Plaintiff would need to get up and
3 down the stairs without assistance or miss the visit. Plaintiff walked up the stairs for the
4 legal visit without assistance. At the end of the visit, Defendants Hoyt and Wade were at
5 the visitation cell door and informed Officer Carlos that the visit was over. Defendant
6 Carlos then opened the door at the top of the stairs to let Defendants Hoyt and Wade walk
7 down the stairs. Defendants Hoyt and Wade left the cell block and did not assist
8 Plaintiff. About eight seconds after they left, Defendant Carlos remotely let Plaintiff out
9 of the visitation room to allow Plaintiff to go down the stairs and back to his cell with no
10 assistance.

11 Plaintiff claims that Defendant Carlos could have held Plaintiff in the visitation
12 room, as it is secure, until a guard was available to assist him down the stairs. Plaintiff
13 further claims that Defendants Carlos, Hoyt, and Wade knew Plaintiff faced a risk of
14 falling if he went down the stairs without assistance and knew that Plaintiff wanted
15 assistance going down the stairs, but failed to assist Plaintiff. Plaintiff began walking
16 down the stairs without assistance while Defendant Carlos watched from the tower. After
17 about nine stairs, Plaintiff “lost his footing and tumbled down the stairs.” Plaintiff was
18 lying at the bottom of the stairs unconscious for almost two minutes before help arrived.

19 Defendant Carlos saw Plaintiff fall and requested assistance over his radio, but
20 there were not any detention officers nearby that could get to Plaintiff quickly. Plaintiff
21 was seen by medical and later transferred to the Maricopa County Integrated System for
22 treatment. As a result of the fall, Plaintiff suffered injuries to his “cervical” and left
23 shoulder and pain in his lower back, knee, and left hand. Plaintiff was released from the
24 hospital on October 30, 2014.

25 On November 5, 2014, a Detention Officer opened Plaintiff’s cell door to allow
26 Plaintiff to go to the second level for a psychiatric visit. Plaintiff told the Detention
27 Officer that he had recently fallen down the stairs and that he should not go up or down
28 the stairs without assistance. The Detention Officer “forced [Plaintiff] to go up the stairs

1 for the visit.” Plaintiff filed a grievance complaining about the November 5 incident and
 2 “being forced to go up the stairs for this and subsequent visits after the fall.” Plaintiff has
 3 been advised that if he has a second-level visit, he should show the detention officer the
 4 response to his grievance so he can have his visit on the lower level.

5 **IV. Analysis**

6 **a. Plaintiff’s Negligence Claims**

7 “To establish a claim for negligence, a plaintiff must prove four elements: (1) a
 8 duty requiring the defendant to conform to a certain standard of care; (2) a breach by the
 9 defendant of that standard; (3) a causal connection between the defendant’s conduct and
 10 the resulting injury; and (4) actual damages.” *Gipson v. Kasey*, 150 P.3d 228, 230 (Ariz.
 11 2007) (citing *Ontiveros v. Borak*, 667 P.2d 200, 204 (Ariz. 1983)).

12 The Court finds that Plaintiff has sufficiently stated claims for negligence against
 13 Defendants Carlos, Hoyt, Wade, Rogers, and Karas. Plaintiff asserts these Defendants
 14 owed Plaintiff a duty to keep him safe while in custody at the jail and their breach of that
 15 duty caused Plaintiff to suffer injuries. More specifically, Plaintiff claims that
 16 Defendants Carlos, Hoyt, and Wade failed to assist Plaintiff up and down the stairs, even
 17 though they were aware of his physical disability and were present when Plaintiff was in
 18 the second floor visitation room on October 29, 2014. Plaintiff further claims that
 19 Defendants Rogers and Karas instructed Defendant Carlos not to assist Plaintiff or to
 20 allow him to conduct his approved visits on a lower tier, which led to Plaintiff’s injuries.
 21 The Court finds these allegations sufficient to state claims for relief.

22 Plaintiff also claims that Defendant Arpaio is liable for the negligent conduct of
 23 the other individual Defendants, who are his employees, under a theory of respondeat
 24 superior. The Court finds these allegations sufficient to proceed on Plaintiff’s negligence
 25 claim against Defendant Arpaio.

26 **b. Plaintiff’s § 1983 Claims**

27 To prevail on a § 1983 claim, a plaintiff must show that (1) acts by the defendants
 28 (2) under color of state law (3) deprived him of federal rights, privileges or immunities

1 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th
2 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d
3 1278, 1284 (9th Cir. 1994)). A plaintiff must allege that he suffered a specific injury as a
4 result of the conduct of a particular defendant and he must allege an affirmative link
5 between the injury and the conduct of that defendant. *Rizzo*, 423 U.S. at 371-72, 377.

6 A pretrial detainee’s claim for unconstitutional conditions of confinement arises
7 from the Fourteenth Amendment Due Process Clause rather than from the Eighth
8 Amendment prohibition against cruel and unusual punishment. *Bell v. Wolfish*, 441 U.S.
9 520, 535 and n.16 (1979). Nevertheless, the same standards are applied. *See Frost v.*
10 *Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). To state a claim under § 1983 for threat to
11 safety, an inmate must allege facts to support that he was incarcerated under conditions
12 posing a substantial risk of harm and that prison officials were “deliberately indifferent”
13 to those risks. *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994). To adequately allege
14 deliberate indifference, a plaintiff must allege facts to support that a defendant knew of,
15 but disregarded, an excessive risk to inmate safety. *Id.* at 837. That is, “the official must
16 both [have been] aware of facts from which the inference could be drawn that a
17 substantial risk of serious harm exist[ed], and he must also [have] draw[n] the inference.”
18 *Id.*

19 Plaintiff alleges threat to safety claims against Defendants Carlos, Hoyt, Wade,
20 Rogers, and Kavas pursuant to § 1983. Plaintiff asserts that these Defendants were aware
21 of the substantial risk to Plaintiff in navigating the stairs with his disability and acted with
22 deliberate indifference to a substantial risk to Plaintiff’s safety in refusing to assist him.
23 The Court finds these allegations sufficient to proceed with Count Two of Plaintiff’s
24 Third Amended Complaint.

25 Accordingly,

26 **IT IS ORDERED** that Plaintiff’s Motion to Amend (Doc. 22) is granted. On or
27 before **January 23, 2017**, Plaintiff shall file a clean copy of his Third Amended
28 Complaint at Doc. 22-1.

